CLERK'S COPY. 2910

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 348

THE FREEPORT WATER COMPANY, PLAINTIFF IN ERROR,

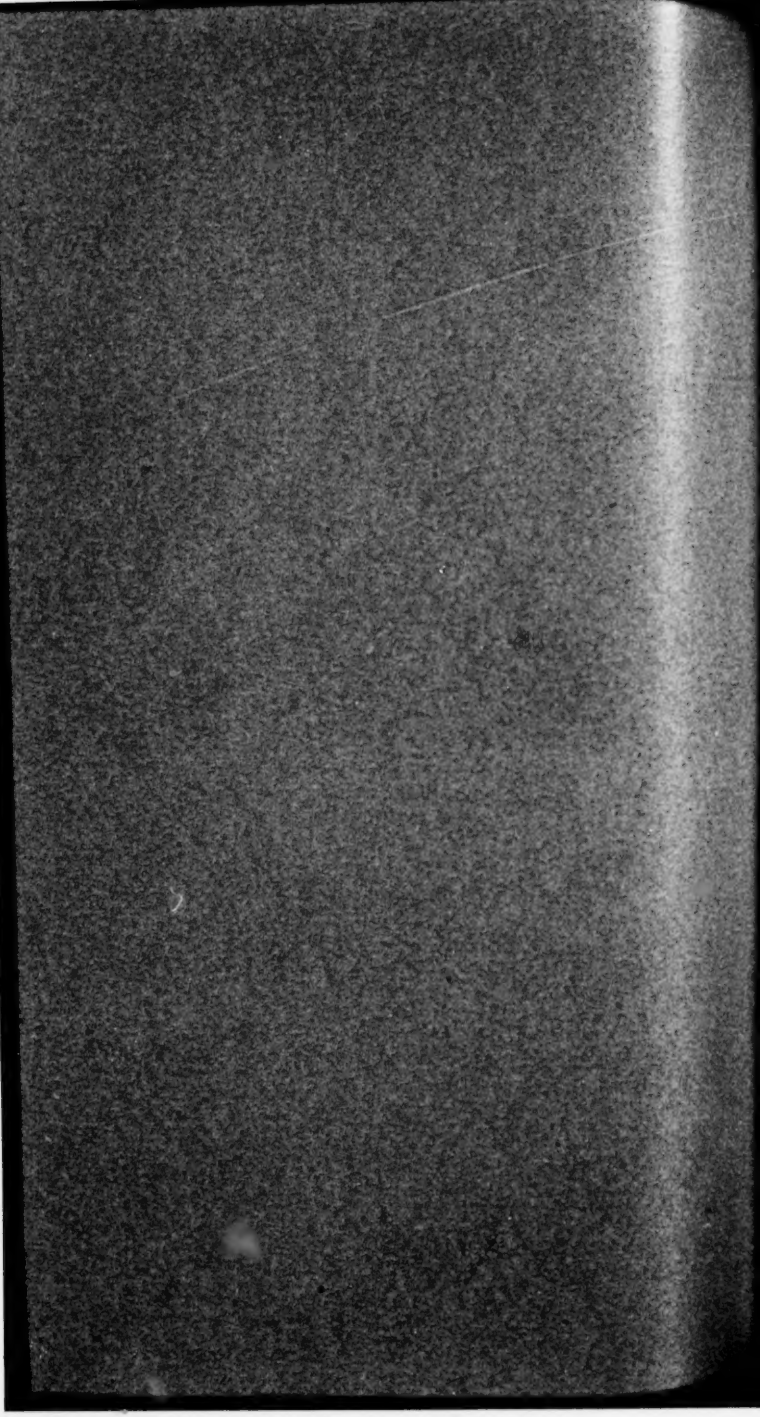
vs.

THE CITY OF FREEPORT.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

FILED JULY 18, 1900.

(17,833.)



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a UNITED STATES OF AMERICA, *ss:*

To City of Freeport, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Illinois, wherein The Freeport Water Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Carroll C. Boggs, chief justice of the supreme court of the State of Illinois, this 3rd day of July, in the year of our Lord one thousand nine hundred.

CARROLL C. BOGGS,
Chief Justice of the Supreme Court of the State of Illinois.

b STATE OF ILLINOIS, } *ss:*
Stephenson County, }

On this ninth day of July, in the year of our Lord one thousand nine hundred, personally appeared Robert P. Eckert before me, the subscriber, a notary public, duly commissioned and sworn, for and in said county, in the State aforesaid, and makes oath that he delivered a true copy of the within citation, on this 9th day of July, A. D. 1900, to Douglas Pattison, corporation counsel of The City of Freeport, defendant in error herein, as one of the attorneys of record for said defendant in error herein in said cause in the supreme court of the State of Illinois; that he delivered a true copy of the within citation, on this 9th day of July, A. D. 1900, to R. B. Mitchell, city attorney of the said City of Freeport, as one of the attorneys of record for said City of Freeport, defendant in error herein in said cause in the supreme court of the State of Illinois; that both said Pattison and said Mitchell are attorneys of record in said cause in the supreme court of the State of Illinois.

ROBERT P. ECKERT.

Sworn to and subscribed the 9th day of July, A. D. 1900.

[Notarial Seal of Oscar E. Heard, Stephenson County, Illinois.]

O. E. HEARD,
Notary Public in and for Stephenson County, Illinois.

Certificate of Magistracy.

STATE OF ILLINOIS, } *ss:*
Stephenson County, }

I, F. C. Held, clerk of the county court in and for said county, do hereby certify that O. E. Heard, Esq., whose name appears to be subscribed to the jurat of the annexed instrument in writing, was

at the date of the execution thereof a notary public in said county, duly commissioned, sworn, and acting as such, and duly authorized to administer oaths, and, further, that I am well acquainted with his handwriting and verily believe that the signature to the said jurat is genuine.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Freeport, in said county, this 9th day of July, A. D. 1900.

[Seal County Court, Stephenson Co., Ill.]

F. C. HELD, *Clerk*,
By W. H. FALL,
Deputy Clerk.

[Ten-cent U. S. internal-revenue stamp, canceled 7, 9, 1900. W. H. F.]

c In the Supreme Court of Illinois.

THE FREEPORT WATER CO.
vs.
THE CITY OF FREEPORT. } 1261. Appeal from Stephenson.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the ninth day of July, in the year of our Lord one thousand nine hundred, a copy of the foregoing citation was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this 9th day of July, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Two-cent U. S. internal-revenue stamp, canceled Jul- 9, 1900. C. M.]
[Two-cent U. S. internal-revenue stamp, canceled Jul- 9, 1900. C. M.]
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d UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the supreme court of the State of Illinois, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Illinois, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Freeport Water Company, the appellant therein, and The City of Freeport, the appellee therein, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their

validity, or wherein was drawn in question the construction
e of a clause of the Constitution or of a treaty or statute of or
commission held under the United States and the decision
was against the title, right, privilege, or exemption specially set up
or claimed under such clause of the said Constitution, treaty, statute,
or commission, a manifest error hath happened, to the great dam-
age of the said Freeport Water Company, as by its complaint ap-
pears, we, being willing that error, if any hath been, should be duly
corrected and full and speedy justice done to the parties aforesaid in
this behalf, do command you, if judgment be therein given, that
then, under your seal, distinctly and openly, you send the record and
proceedings aforesaid, with all things concerning the same, to the
Supreme Court of the United States, together with this writ, so that
you have the same in the said Supreme Court, at Washington,
within 26 days from the date hereof, that, the record and proceed-
ings aforesaid being inspected, the said Supreme Court may cause
further to be done therein to correct that error what of right and
according to the laws and customs of the United States should be
done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the seventh day of July, in the year of our Lord one thousand nine hundred.

{ The Seal of the Circuit Court of the United States for the South'n Dist. Ill. }

JAMES T. JONES,
Clerk of the Circuit Court of the United States for the Southern District of Illinois.

Allowed by—
CARROLL C. BOGGS,
Chief Justice of the Supreme Court of the State of Illinois.

f In the Supreme Court of Illinois.

THE FREEPORT WATER COMPANY
vs.
THE CITY OF FREEPORT. } 1261. Appeal from Stephenson.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the ninth day of July, in the year of our Lord one thousand nine hundred, a copy of the foregoing writ of error for the defendants in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this 9th day of July, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,
Clerk of Supreme Court.

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g In the Supreme Court of Illinois.

THE FREEPORT WATER CO. *vs.* THE CITY OF FREEPORT. } 1261. Appeal from Stephenson.

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to fifty-five (55), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this 9th day of July, in the year of our Lord one thousand nine hundred.

Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.

CHRISTOPHER MAMER,
Clerk of Supreme Court.

[Two-cent U. S. internal-revenue stamp, canceled Jul- 9, 1900. C. M.]
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1 At a supreme court begun and held at Springfield on Tuesday, the sixth day of February, in the year of our Lord one thousand nine hundred, within and for the State of Illinois.

Present: James H. Cartwright, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the sixth day of February, A. D. 1900, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the circuit court of Stephenson county in a certain cause entitled "The Freeport Water Company *vs.* The City of Freeport;" which said transcript is in the words and figures following, viz:

2 UNITED STATES OF AMERICA, } ss:
State of Illinois, Stephenson County, }

In the Circuit Court, March Term, A. D. 1896.

Pleas before the Honorable John D. Crabtree, one of the judges of the fifteenth judicial circuit of the State of Illinois and sole presiding judge of the circuit court of Stephenson county, in the State aforesaid, and at a term thereof begun and held at the court-house, in the city of Freeport, in said county, on the first Monday (being the 16th day of March), in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the said United States the one hundred and twentieth.

Present: Honorable John D. Crabtree, judge of the fifteenth judicial circuit of the State of Illinois; W. F. Goddard, clerk; O. E. Heard, State's attorney; E. B. Clingman, sheriff.

Attest: W. F. GODDARD, *Clerk.*

Be it remembered that heretofore, to wit, on the 21st day of August, A. D. 1896, it being in vacation after said March term of said court, there issued out of the clerk's office of said court a people's writ of summons; which said writ, together with the return of the sheriff endorsed thereon, is in words and figures as follows, to wit:

STATE OF ILLINOIS, } ss:
Stephenson County, }

The People of the State of Illinois to the sheriff of said county Greeting:

We command you to summon The City of Freeport, if it be found in your county, personally to be and appear before the circuit court of said county of Stephenson on the first day of
3 the next term thereof, to be holden at the court-house, in the city of Freeport, in said county, on the first Monday in the month of September next, to answer unto The Freeport Water Company in a plea of assumpsit, to the damage of said plaintiff, as it says, in the sum of sixty-five hundred dollars; and have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness W. F. Goddard, clerk of our said circuit court,
[SEAL.] and the seal of said court, at Freeport, in said county, this 21st day of August, A. D. 1896.

Attest:

W. F. GODDARD, *Clerk,*
By F. R. BICKENBACH, *Deputy.*

Summons No. 16491.

THE FREEPORT WATER COMPANY
vs.
THE CITY OF FREEPORT.

Served the within on the within-named defendant by reading the same to George H. Tandy, he being city clerk of the within-named The City of Freeport, and at the same time delivering to him a true copy thereof, this 28th day of August.

E. B. CLINGMAN, *Sheriff.*

Service	$ .75
Mileage	.10
Return	.10

WM. LATHROP AND
H. C. HYDE,
Plaintiff's Att'y.

Filed Aug. 29th, 1896.

W. F. GODDARD, *Clerk,*
By F. R. BICKENBACH, *Dep.*

4 And afterwards, to wit, on the 25th day of August, A. D. 1896, the said plaintiff, by its attorneys, filed in said clerk's office its certain declaration, which is in words and figures as follows, to wit:

STATE OF ILLINOIS, } *ss:*
Stephenson County, }

In the Circuit Court of said Stephenson County, to the September Term, A. D. 1896.

The Freeport Water Company, a corporation duly organized and existing under the laws of this State, located and having its place of business at the city of Freeport, in the county aforesaid, plaintiff in this suit, by H. C. Hyde & William Lathrop, its attorney-, complains against The City of Freeport, a municipal corporation organized and existing under the general act of the State of Illinois aforesaid, entitled "An act to provide for the incorporation of cities and villages," approved April 10, 1872, and in force July 1st, 1872, and the acts amendatory thereof, defendant in this suit, which has been duly summoned to answer the plaintiff in an action on promises, for that whereas on and prior to June 5th, 1882, said defendant, City of Freeport, was desirous of contracting with one Nathan Shelton and his assigns for the construction and establishment of a systerm of water works for fire protection and for the supply of said city of Freeport and the citizens thereof with good, clear water suitable for domestic and manufacturing purposes.

And the plaintiff avers that said defendant, City of Freeport, being so desirous to secure the construction and establishment of a

system of water works for fire protection and for the supply of the city and the citizens thereof with good and pure water, as aforesaid, afterwards, to wit, on the 6th day of June, 1882, by its ordinance then passed by its city council and approved by its mayor,
5 granted unto said Nathan Shelton or his assigns the exclusive right and privilege, for the term of thirty years from the 1st day of July, 1882, of supplying said city of Freeport and the citizens thereof by a system of water works, to be constructed as in said ordinance prescribed, with good, clear water suitable for domestic and manufacturing purposes, upon the terms and conditions set forth in said ordinance. The said ordinance was afterwards, to wit, on the 6th day of June, 1882, published by order of the city council of said city of Freeport in the corporation newspaper of said city; and afterwards, to wit, on the 7th day of June, 1882, the said Nathan Shelton filed with the city clerk of said city of Freeport his acceptance in writing of the terms and provisions of said ordinance, as required by the thirteenth section thereof, in words and figures following, viz:

"To the city council of the city of Freeport, in the county of Stephenson, State of Illinois:

"I hereby accept the terms and conditions of an ordinance of said city entitled 'An ordinance to provide for a system of water works in the city of Freeport,' passed by the city council of said city June 6th, A. D. 1882, to all intents and for all purposes as by the 13th section of said ordinance I am required to do.

"NATHAN SHELTON.

"Dated Freeport, June 7th, A. D. 1882."

Whereby the said ordinance became and was a valid and binding contract between said defendant, City of Freeport, aforesaid and said Nathan Shelton and his assigns according to the terms and provisions thereof; that said ordinance is in words and figures following, viz:

"An ordinance to provide for a system of water works in the city of Freeport.

"SEC. I. Be it ordained by the city council of the city of
6 Freeport:

"That there is hereby given and granted to Nathan Shelton or his assigns the exclusive right and privilege for the term of thirty years from the 1st day of July, 1882, of supplying the city of Freeport in the county of Stephenson and State of Illinois and the citizens thereof by a system of water works with good clear water suitable for domestic and manufacturing purposes subject to the terms and conditions set forth in this ordinance. The source of supply of such water shall be the Pecatonica river above where any sewerage or filth from Freeport enters the river all said water shall be filtered.

"SEC. 2. That said Nathan Shelton or his assigns is hereby au

thorized to establish, construct, maintain and operate said works in or adjacent to said city of Freeport; to receive, take and store, purify conduct and distribute said water through said city; to construct and extend aqueducts and pipes through all the streets alleys lanes or public grounds and across any bridge or stream in said city, to erect and maintain engines machinery and other appliances necessary for the proper conducting of said works and for supplying said city and the inhabitants thereof with water of the character described in section one of this ordinance and for that purpose to take up all pavements or sidewalks on such streets alleys lanes or public grounds and make such excavations therein as may be necessary to lay, repair, keep and maintain aqueducts and pipes below the surface of the ground, for conveying and distributing said water as aforesaid. Provided that said Nathan Shelton, or his assigns shall within a reasonable time replace and repair all pavements and sidewalks and refill all such excavations in as good condition as they were before as near as may be.

"And provided further, that in removing such pavements
7 or sidewalks and making such excavations the said Nathan Shelton or his assigns shall suitably guard and protect the same so as to prevent injury to persons or property by reason thereof. And the said Nathan Shelton or his assigns shall be liable for all damages occasioned by a failure so to guard and protect persons and property from injury by reason of the removal of such pavements or sidewalks, or the making of such excavations as aforesaid, whether done by themselves, their lessees, contractors, or subcontractors in any degree. The rights and liabilities provided for in this ordinance shall continue for a period of thirty years, unless sooner extinguished by purchase as hereinafter provided.

"SEC. III. Any person or persons engaged in removing any pavement or sidewalk or in making any excavation within said city pursuant to the provisions of this ordinance, who shall fail to properly guard and protect the same, upon conviction thereof shall be liable to a fine of not less than five dollars nor more than twenty dollars.

"SEC. IV. The said water works shall be constructed with a stand-pipe and the pumping machinery of said water works shall have an easy aggregate capacity to pump at least three million gallons of water in twenty-four hours, and they shall be increased as the growth of the city and its needs require. There shall not be less than eight miles of mains for the distribution of water in said city ranging in size from sixteen inches or over, in their inner diameter, to four inches in their inner diameter and in any event to be of sufficient size to furnish all the water necessary for the purposes contemplated in this ordinance. All mains shall be of what is known as the standard-weight water pipe and they shall all be tested at the foundry where they are made to a pressure of three
hundred pounds to the inch, and when under such pressure
8 they shall be struck with a four-pound hammer. Before the placing of water mains or pipes upon a street of said city not having an established grade, the grade of said street shall be estab-

ished. Said mains shall be located so as to allow of and render easible of placing on them at least eighty fire-hydrants. Such ydrants shall be placed at such points as the city council shall irect.

"SEC. V. Any person or persons who shall wilfully or maliciously njure or destroy any portion of the works, fixtures or other property ppertaining or pertaining to said water works within said city or hall wrongfully interfere with, or open any hydrants within said ity or waste any water therefrom shall be deemed guilty of a mis-demeanor, and on conviction thereof shall be liable to a fine of not ess than three dollars nor more than twenty dollars.

"SEC. VI. The city of Freeport reserves to itself the right to acquire by purchase and become the sole owner of said water works including all machinery mains, pipes buildings and property thereto appertaining at the expiration of thirty years from the first day of July, 1882, by giving at least six months' official notice thereof to the owner or owners of said water works, upon paying therefor to the owners thereof the value of said property to be ascertained by appraisement as follows: Said city shall select one competent person and the owner or owners of said water works shall select another, and the two persons so selected shall select a third, or in case they cannot agree on such third person, a third person shall be appointed by the judge of the circuit court of the thirteenth judicial circuit of the State of Illinois residing at that time furthest from said city of Freeport and the three men so determined upon shall appraise the value of said property at its then cash value, which appraisement shall be binding upon both parties as to
9 the value thereof and said city shall have the right to purchase and become the absolute owner of said water works and property at such appraised value and in case said city does not purchase and become the owner of said water works and property as aforesaid at the expiration of thirty years from the first day of July, 1882, then all the rights and privileges in this ordinance granted to said Nathan Shelton or his assigns shall be extended for a further period of twenty-five years, subject to the rights of the city to purchase as aforesaid, and subject to the same duties liabilities obligations and penalties as herein provided for.

"SEC. VII. The said Nathan Shelton or his assigns shall erect double-nozzle fire-hydrants upon all mains ordered laid by said city council in said city at the rate of not less than ten to each mile of said mains and shall erect said fire-hydrants whenever and wherever said city council shall direct. And said city shall pay to said Nathan Shelton or his assigns as an annual rental for the first one hundred of said hydrants the sum of one hundred dollars each, for all said hydrants over one hundred and up to one hundred and fifty an annual rental of eighty dollars each, and for all of said hydrants over one hundred and fifty an annual rental of fifty dollars each, which said rentals shall be payable semi-annually on the fifteenth days of January and July in each year, and the pay of each hydrant shall commence when each hydrant is actually ready for use and the city officially notified thereof and shall continue during

the full term specified in this ordinance unless said city shall sooner become the owner of said water works as hereinbefore provided in which event said rental shall cease. The pay of any hydrant shall cease whenever any hydrant is out of repair or unfit for use or incapable of throwing a stream as provided for in this ordinance.

"SEC. VIII. The said water works when constructed shall
10 have the capacity of discharging six streams through one-inch nozzles from any six hydrants through fifty feet of two-and-one-half hose to a height of one hundred feet or to maintain its equivalent in pressure at the nozzle of said hydrants at all times or for any lenght of time consecutively. The city shall have five days after the completion of said works in which to test the capacity thereof before accepting the same. And due notice of the completion of said works shall be given by the said Nathan Shelton or his assigns in writing to the city clerk of said city. In case of a fire-alarm at the engine-house of said water works the said Nathan Shelton or his assigns shall immediately cause a sufficient pressure to produce the six streams aforesaid so long as needed for the extinguishing of any fire.

"SEC. IX. The city shall have the right to use, free of charge water from the hydrants on streets curbed and guttered for the purpose of washing and flushing the gutters and from any hydrant for the purpose of flushing any and all sewers in said city whenever the city council shall deem it necessary, for sanitary purposes, upon giving notice to the person in charge of said water works. The city shall have water free of charge for the use of the fire department, and for furnishing the city hall and the offices occupied for city purposes, for all public schools of the city, for all churches and for four public fountains for drinking only and one fountain in the public square or park should the city erect the same.

"SEC. X. The rates to consumers shall not exceed the following annual rates.

" Dwelling-houses not exceeding five rooms		$7.00
" Each additional room		.75
" Banks including one wash-basin		10.00
" Bakeries average daily use for each bl. flour		3.50
11 " Barber shops one chair		5.00
" " each additional chair		2.50
" Bath-houses public per tub	$7.00 to	15.00
" " rooms private "		3.50
" " " each additional		2.00
" Blacksmith shop one fire		4.00
" " " each additional fire		1.50
" Butcher stalls and shops	$4.00 to	10.00
" Billiard saloons one table		5.00
" " " each additional "		1.50
" Book-bindery	$10.00 to	15.00
" Bars and drinking saloons	10.00	40.00
" Candy factories	8.00	50.00

"Cigar manufactory five hands or under		5.00
" " " each additional hand		1.00
"Dray teams and street-railway horses including washing of drays, wagons & cars each horse		2.00
"Dyeing & scouring including laundries	$15.00 to	40.00
"Eating saloons	10.00 to	30.00
"Fountains flowing not exceeding 6 hours per day during the season May to November		5.00
"$\frac{1}{8}$-inch orifice		12.00
"$\frac{3}{16}$ " "		25.00
"$\frac{1}{4}$ " "		45.00
"$\frac{5}{16}$ " "		
"Filling private cisterns, furnishing water only, each time per 100 bbls. or under		1.00
"Hotels and boarding-houses per room		1.00
"Street sprinkling by hose including washing and sprinkling sidewalks 20-ft. front or less		5.00
12 "Each additional foot		.10
"Sprinkling lawns per 1,000 sq. feet no charge less than $5.00		5.00
"Each additional 1,000 ft		1.00
"Livery and other public stables including washing of carriages each horse		2.50
"Offices and sleeping-rooms including one wash-basin	$3.00 to	10.00
"Printing offices according to the number of presses and persons not including steam-engines	$6.00 to	40.00
"Private stables including washing carriages one horse		3.00
" " " " " " two horses		5.00
"Each additional horse		1.00
"Each cow		1.50
"Public halls	$5.00 to	25.00
"Photograph galleries	10.00 to	25.00
"Steam-engines assessed as per nominal horse-power of 10 hours' run		2.50
"Street sprinkling per wagon each team employed per day		.50
"Stores	5.00 to	15.00
"Steam boilers for house warming &c. each sq. foot surface (no charge less than $5.00)		.30
"Tobacco manufactory per hand no charge less than $5.00		1.00
"Urinals with constant flow		10.00
" " private		3.50
"Wash-basins stationery 1st free all others each		1.00
"Water-closets in private houses per bowl		2.50
13 "Water-closets public houses per bowl		5.00
"Each additional bowl		1.50
"Workshops 10 persons or under		5.00
"Each additional person		.25
"Brick-work :		
"Tempering mortar & wetting brick per M kiln count		.05
"Tempering mortar only		.02
"Making mortar		.02

"Stone-work:

"Making mortar per perch of 16½ cubic feet.....	.05
"Tempering " " "	.02

"Plastering:

"Making mortar two-coat work per 100 sq. yds.....	.10
" " " three " " "	.15
"Breweries distilleries rectifiers and malt-houses per 1,000 gallons.....	.15

"Rents for all purposes not herein named will be fixed by meter measurement as may be agreed upon between the consumer and the water company not exceeding the following meter rates:

"100 to 500 gallons per day at rate of per 1,000.....	.50
"500 to 1,000 " " " " "	.40
"1,000 to 2,000 " " " " "	.35
"2,000 to 3,000 " " " " "	.30
"3,000 to 4,000 " " " " "	.25
"4,000 to 5,000 " " " " "	.20
"Over 5,000 " " " " "	.15

"SEC. XI. The said Nathan Shelton or his assigns shall extend mains or pipes along the center or sides of streets where no pipes are laid whenever required to do so provided there shall be
14 an equivalent of two tenants to take water for every 120 feet of pipes so asked to be laid but said city shall not be liable to rent any hydrants unless said hydrants shall be ordered placed by said city for city purposes, but said city shall have the free and unobstructed use of all private hydrants stop-cocks or faucets in said city for the purpose of extinguishing fires free of charge to said city for such purposes.

"SEC. XII. The said Nathan Shelton or his assigns shall commence the erection of said water works within thirty days from July 1st, 1882 (if said construction is not commenced on or before Aug. 1st 1882 then all rights and privileges herein granted shall be null and void at the option of the council) and shall prosecute the same as rapidly as possible and shall complete the same on or before the 1st day of July 1883. If said works are not completed on or before July 1st 1883 then all the rights and franchise- granted in this ordinance shall be null and void unless said city shall by ordinance extend the same or said city shall have the right at its option to take possession of said works upon paying for what has been done at an appraised value.

"SEC. XIII. This ordinance shall become binding as a contract between the City of Freeport, Illinois, and Nathan Shelton or his assigns upon the filing with the city clerk of a written acceptance thereof by Nathan Shelton or his assigns provided the same shall be done within 30 days from the passage and publication of this ordinance and this ordinance when so accepted shall not be altered, amended or changed in any way without the concurrence and con-

sent of both parties thereto and interested therein or their successors or assigns.

"SEC. XIV. And be it further ordained that an ordinance entitled 'An ordinance to provide for a system of water works in the
15 city of Freeport' passed and approved March 9th A. D. 1881, be and the same is hereby repealed and all other ordinances or parts thereof in conflict with this ordinance be and the same are hereby repealed."

And whereas after the passage of said ordinance and the acceptance thereof by said Nathan Shelton, as aforesaid, to wit, on the 8th day of August, 1882, said Nathan Shelton, for a valuable consideration to him moving from said plaintiff, assigned and set over unto the plaintiff all his right and interest in said contract and in all rents, benefits, and advantages to accrue therefrom to him, the said Nathan Shelton, or his assigns, and subject to all the duties and obligations by said ordinance imposed upon said Shelton and his assigns, of which the said defendant, City of Freeport, then had notice.

And the plaintiff further avers that said system of water works was duly constructed and afterwards, to wit, on the 18th day of December, 1882, was accepted by said City of Freeport from the plaintiff as a full compliance with the terms of the contract created by said ordinance and the acceptance thereof, as aforesaid.

And the plaintiff further avers that ever since the said acceptance of said water works, to wit, on the 18th day of December, 1882, it has in all things on its part observed and performed the terms of said contract, and has furnished to the said defendant free of charge water as specified and provided in the ninth clause of said ordinance.

And the plaintiff further avers that it had on and prior to January 1st, 1896, constructed and placed upon the mains of said water works in said city, under order and direction of the city council of said city of Freeport, 121 hydrants in all respects as required by section seven of said ordinance, and that said defendant, City
16 of Freeport, had, on and prior to January 15th, 1896, paid the rentals upon said hydrants so constructed and established, as aforesaid, to January 1st, 1896, pursuant to the stipulations and provisions in section seven of said ordinance in that behalf.

And the plaintiff further avers that there became and was due to it on the 15th day of July, 1896, from the defendant, City of Freeport, for the rent of said hydrants from January 1st, 1896, to July 1st, 1896, the sum of five thousand eight hundred and forty dollars ($5,840.00) pursuant to the terms and provisions in that behalf of said section seven of said ordinance, which sum remains due and wholly unpaid.

The plaintiff further avers that the number of hydrants constructed and placed upon said water mains in said city of Freeport pursuant to the order of said city on and prior to January 1st, 1896, and in proper repair and fit for use and in use by said city from

January 1st, 1896, to July 1st, 1896, was 121, and the rental of the first one hundred of said hydrants from January 1st, 1896, to July 1st, 1896, was fifty dollars ($50.00) per hydrant, amounting to five thousand dollars ($5,000.00); and the rental of the remaining 21 hydrants from said January 1st to July 1st, 1896, was forty dollars ($40.00) per hydrant, amounting to eight hundred forty dollars ($840.00), as provided and stipulated in said section seven of said ordinance; and that said defendant, City of Freeport, neglects and refuses to pay the said rentals upon said hydrants or any part thereof from said January 1st to July 1st, 1896, pursuant to the provisions of the seventh section of said ordinance. By reason whereof the said defendant, to wit, on July 15th, 1896, became and was justly indebted to the plaintiff in said sum of five thousand eight hundred and forty dollars ($5,840.00) for rent of said hydrants from January 1st, 1896, to July 1st, 1896, as aforesaid, and afterwards, to wit, on the 16th day of July, A. D. 1896, to wit, at
17 said county, in consideration of the premises, promised to pay said sum of money to the plaintiff upon request; yet the said defendant, although often requested so to do, has not payed said sum of money or any part thereof to the said plaintiff.

And also for that whereas the said defendant, being an incorporated city organized and existing under and by virtue of the general laws of the State of Illinois for the incorporation of cities and villages theretofore enacted, and desiring and intending to induce one Nathan Shelton, or his assigns, to construct and operate a system of water works in said city and thereby supply the same and the inhabitants thereof with water for the protection against fire and for domestic and manufacturing purposes, heretofore, to wit, on the 6th day of June, A. D. 1882, to wit, at said county of Stephenson, by its city council, passed a certain other ordinance entitled "An ordinance to provide for a system of water works in the city of Freeport," which ordinance was on the day and year last aforesaid duly approved by its mayor, and afterwards, to wit, on the same day and year last mentioned, duly published, and a true copy of which said ordinance is set out in words and figures in the first count of this the said plaintiff's declaration; and the plaintiff says that afterwards, and within thirty days from the passage and publication of said ordinance, as aforesaid, to wit, on the 7th day of June, A. D. 1882, to wit, at said county, the said Nathan Shelton in said ordinance mentioned filed with the city clerk of said defendant city his acceptance of said ordinance in a writing by him duly signed, a true copy of which said acceptance is also set out in said first count of said plaintiff's declaration; and the plaintiff further says that thereupon, by said ordinance and acceptance thereof, the same became and was a valid and binding contract between the
18 said defendant and said Nathan Shelton and his assigns, according to the terms thereof; and the plaintiff further says that in and by said contract the said defendant, in consideration that the said Nathan Shelton and his assigns thereby agreed to construct and operate said water works in said city, to erect double-nozzle fire-hydrants upon all water mains ordered laid in said city

by its city council whenever and wherever the said city council should direct, and supply the same with water for the use of said defendant, and supply the inhabitants of said city with water, as in said ordinance provided, then and there undertook and faithfully promised the said Nathan Shelton to pay him or his assigns each half year, on the 15th days of January and July in each year, a rental of fifty dollars for each of the first one hundred of said hydrants, and of forty dollars for each of said hydrants over one hundred and up to one hundred and fifty, and of twenty-five dollars for each of said hydrants over one hundred and fifty, from and after the time the same was actually ready for the use of the said defendant and it was officially notified thereof; and the plaintiff further says that the said Nathan Shelton commenced the construction of said water works, under and pursuant to said contract, before the first day of August, A. D. 1882, and continued the same up to the 8th day of August, A. D. 1882, on which last-named day and year he assigned and transferred to the plaintiff for a valuable consideration all his rights under said contract and all his interest therein, as well as all his rights, privileges, and franchises by said ordinance granted and so much of said water works as he had then constructed; of which assignment the said defendant then and there had notice.

And the plaintiff further says that thereupon it continued the construction of said water works in said city and completed
19 the same prior to the 1st day of July, A. D. 1883, to wit, on the 18th day of December, A. D. 1882, and that on said last-mentioned day and year the said defendant duly accepted the same from the said plaintiff as and in full compliance with the terms of said ordinance in that behalf.

And the plaintiff further says that said defendant paid to the said plaintiff each half year, on the 15th days of January and July in each year, all the rentals which had accrued to it under and pursuant to the terms of said contract, as aforesaid, for fire-hydrants erected by the plaintiff for the defendant's use, under and in accordance with the terms of said ordinance, up to the 1st day of January, A. D. 1896; and the plaintiff further says that pursuant to and under the direction of said city council it had erected, prior to the first day of January, A. D. 1896, upon its water mains in said city one hundred and twenty-one double-nozzle fire-hydrants, actually ready for the use of said defendant, and had officially notified the said defendant thereof prior to said last-mentioned day and year, and from thence hitherto has continued to furnish water to said defendant through said hydrants, as by said contract required, and that during all that time the said defendant was and still is in the full possession of said hydrants, and had and still has the full use of said water so, as aforesaid, furnished by the said plaintiff.

And the plaintiff further says that there was due to it from the said defendant, under and pursuant to the terms of said contract, on the 15th day of July, A. D. 1896, for the half year's rentals of said hydrants from the first day of January, A. D. 1896, up to the 1st day of July, A. D. 1896, the sum of five thousand eight hundred and forty dollars, which sum the said defendant afterwards, to wit,

on the 16th day of July, A. D. 1896, to wit, at said county,
20 promised the said plaintiff to pay to it upon request; yet the said defendant, although often requested so to do, has wholly failed and neglected hitherto to pay said sum or any part thereof to the said plaintiff.

And for that whereas also the said defendant, on the first day of August, in the year of our Lord A. D. 1896, to wit, at said county, was justly indebted to the plaintiff in the sum of five thousand eight hundred and forty dollars for the rental of one hundred and twenty-one water hydrants from the first day of January, A. D. 1896, to the first day of July, A. D. 1896, pursuant to the contract of said defendant in that behalf; and in the sum of five thousand eight hundred and forty dollars for the price and value of work performed and material furnished by the plaintiff for the defendant at its request.

And in the sum of five thousand eight hundred and forty dollars for money then and there received by the defendant for the use of the plaintiff; and in the sum of five thousand eight hundred and forty dollars for so much money then and there found due from the said defendant to the said plaintiff upon an account then and there stated between them; and, being so indebted to the said plaintiff, the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, undertook and then and there promised the plaintiff well and truly to pay unto the plaintiff the said last-mentioned sum of money upon request of the said plaintiff; yet the said defendant, although often requested so to do, has hitherto altogether disregarded its said promise and has not paid — several sums of money or any or either of them or any part thereof to the said plaintiff, to the damage of the said plaintiff six thousand five hundred dollars; and therefore the said plaintiff brings suit, etc.

WM. LATHROP,
H. C. HYDE,
Pl'ff's Att'ys.

21 And afterwards, to wit, on the 14th day of September, A. D. 1896, the said defendant, by its attorneys, filed in said court and cause its plea of the general issue and its four special pleas to the plaintiff's said declaration.

And afterwards, to wit, on the 8th day of October, A. D. 1896, the said plaintiff, by its attorneys, filed in said court and cause its replication to the defendant's said plea of the general issue and its demurrer to the defendant's said four special pleas; which said replication and demurrer is in the words and figures following, to wit:

STATE OF ILLINOIS, } ss:
Stephenson County, }

In Circuit Court, to September Term, 1896.

FREEPORT WATER COMPANY }
vs.
CITY OF FREEPORT. }

And the said plaintiff, by Hyde and Lathrop, its attorneys, comes, etc., and, as to the plea of said defendant first above pleaded, wherein defendant puts itself upon the country, doth the like.

HENRY C. HYDE AND
WILLIAM LATHROP,
Pl'ff's Attorneys.

And the said plaintiff, as to the special pleas of said defendant by it firstly, secondly, thirdly, & fourthly above pleaded, says that the said several pleas and each and every of them, in manner and form as pleaded, and the matters therein contained, are insufficient in law to bar the plaintiff of its aforesaid action against said defendant, and the plaintiff demurs to said pleas and each of them; and for special cause of demurrer to said pleas and each of them said plaintiff says that said pleas and every of them only set up matters
22 which may be given under the general issue, if admissible in evidence at all, and that said pleas and each of them are in other respects informal and insufficient, and that the plaintiff is not bound to answer the same; and this the plaintiff is ready to verify. Wherefore the plaintiff prays judgment, etc.

HENRY C. HYDE &
WM. LATHROP,
Att'ys for Pl'ff.

UNITED STATES OF AMERICA:

STATE OF ILLINOIS, } ss:
Stephenson County, }

In the Circuit Court of said County, of the March Term, A. D. 1897.

Pleas before the Honorable James Shaw, one of the judges of the 15th judicial circuit of the State of Illinois and sole presiding judge of said Stephenson county circuit court, and at a term thereof begun and held at the court-house, in the city of Freeport, in said county, on the 15th day of March, A. D. 1897, and in the one hundred and twenty-first year of the Independence of the United States.

Present: The Hon. James Shaw, judge of said court; H. W. Bolender, clerk; O. E. Heard, State's attorney; E. B. Clingman, sheriff.

Attest: H. W. BOLENDER, *Clerk.*

Be it further remembered that on the 29th day of March, A. D. 1897, the same being one of the days of said March term, A. D. 1897, of said court, the following proceedings were had and entered of record in said court, to wit:

THE FREEPORT WATER COMPANY
vs.
THE CITY OF FREEPORT. } Assumpsit.

And now, on this day, come the parties hereto, by their re-
23 spective attorneys, and the said defendant now here asks leave of the court to withdraw its plea of the general issue and its third and fourth special pleas, which leave is given by the court; and the said defendant now here also asks leave to amend its first and second special pleas, which leave is given by the court; whereupon the defendant files its amended special pleas, and the plaintiff's demurrer is extended to such amended pleas, and this cause is taken under advisement by the court and continued to the next term for final disposition.

Which said amended first and second special pleas so filed by the said defendant are in the words and figures following, to wit:

No. 1. And for a further plea in this behalf the defendant says that the plaintiff ought not to have its aforesaid action against it, the defendant, because defendant says that the several supposed causes of action in the said declaration mentioned are one and the same, to wit, the supposed cause of action in the said first count mentioned, and not different causes of action, and that at the time of the enacting of the said ordinance in that count mentioned, to wit, on the 6th day of June, 1882, the defendant was a municipal corporation organized under the general law of the State of Illinois for the incorporation of cities and villages, and in its legislative capacity and in pursuance of the then existing statutes of said State relating to "water works" the then city council of said city of Freeport caused to be enacted the said ordinance, and that the said Nathan Shelton in the said ordinance mentioned accepted the provisions thereof.

But the defendant avers that the rates for the water hydrants therein mentioned and for water service to individuals of said municipality, as fixed and established in and by the said ordinance, were then unjust, unreasonable, and oppressive to the citizens and tax-payers of said city, and so remained and continued to be
24 unjust, unreasonable, and oppressive from the said enactment thereof up and until the subsequent action of the council of said city had in relation thereto, as hereinafter stated.

And the defendant further avers that on, to wit, the 10th day of February, 1896, within the said city of Freeport, the said ordinance then being in force and effect and the rates for water so fixed thereby remaining and then and there being unjust, unreasonable, and oppressive, as aforesaid, the city council of said city of Freeport, by an ordinance then and there enacted by said city council and approved by its mayor, readjusted and fixed such water rates so as to make the

ame just, reasonable, and fair; that the said last-mentioned ordiance was afterwards, to wit, on the 11th day of February, 1896, uly published by the order of the said city council of said city in he corporation newspapers of said city, whereby the said last-menioned ordinance then became and was a legal and valid enactment f said municipality and in force according to the terms and proisions thereof. Said ordinance is in words and figures following:

An ordinance to fix and regulate water rates and the prices and charges for water furnished, and for the use of water meters furnished to the city of Freeport, Illinois, and its inhabitants.

Be it ordained by the city council of the city of Freeport:

SECTION I. That the Freeport Water Company, a corporation, now furnishing to the city of Freeport and its inhabitants, water for fire protection, domestic uses and manufacturing purposes and other uses and purposes, shall be entitled to charge and receive therefor, and for the use of water meters, the rates and prices hereinafter fixed and no more.

Fire Protection and Public Uses.

SECTION II. Said corporation shall be entitled to charge and receive from the city of Freeport for all water furnished for fire protection and other public uses and purposes as hereinafter defined and enumerated an annual rental or rate of fifty dollars ($50.00) for each double-nozzle fire-hydrants now in use in said city of Freeport, or any that may be ordered hereafter by the city council of the city of Freeport, such rental to be payable in semi-annual installments on the fifteenth (15th) day of January and July, provided that it shall be shown by a certificate signed by the committee on water, city engineer, and chief of fire department that test of the works of said corporation has been made within six (6) months, and that such works have been in such condition as to furnish at all times and for any length of time a fire pressure sufficient to throw six (6) fire streams from six (6) hydrants chosen by the committee on water, each through fifty (50) feet of two and one-half-inch hose and one-inch nozzle from each hydrant so chosen to a height of one hundred (100) feet, or maintain its equivalent in pressure at the nozzles of the hydrants. Where the work- of said corporation are not shown to be maintained in condition to furnish such fire pressure the rental shall be one-half the amount hereinbefore fixed. The above rate and rental shall be in full payment for all water furnished as follows: For fire protection including the furnishing and setting of fire-hydrants for all water used by the fire department in extinguishing fires and in practice, for all water used by the committee on water for cleaning, washing, flushing gutters and sewers, in said city, and for all water used for the city hall, fire and police stations, and other city offices, for drinking fountain in park when desired, and for all public schools and churches in the city.

Domestic and Other Uses, Without Meter.

SECTION 3. Said corporation shall be entitled to charge and
26 receive for water furnished for domestic uses, manufacturing purposes, and other uses and purposes, where such water is furnished without meter, the following rates, which shall be in full, for water furnished and for turning on and turning off water:

Assessment Rates.

Banks, one faucet	$8.00 per year.
Bakeries, daily average barrels of flour used per barrel	3.25 "
Barber shop, one chair	4.50 "
Barber shop, each additional chair	1.50 "
Baths private, one tub	3.00 "
Baths private, each additional tub	1.50 "
Baths private, additional for water-closet & urinal.	2.00 per year.
Baths public, per tub	7.00 per year.
Baths hotel, per tub	6.00 "
Blacksmith shop, one fire	3.25 "
Black- shop, each additional fire	1.25 "
Butcher shop, each stall	3.00 "
Butcher shops	$3.75 to 9.00 "
Boarding-houses per room	.75 "
Hotels per room	.75 "
Offices per wash-basin	2.75 "
Printing offices, not including engines, ten hands or less	9.00 "
Printing offices, each additional hand	.25 "
Photograph galleries	$7.00 to 15.00 "
Public halls	$5.00 to 20.00 "
Residences occupied by one family, 6 rooms or less.	6.00 per year.
Residences each additional rooms up to nine rooms	.75 "
Residences additional room over nine rooms	.50 "

27 Provide- in no case in the rating of residences shall a cellar or cellars be counted as a room or rooms, unless there be a faucet in the cellar or cellars, in that case the cellar or cellars shall be counted as one room only, but a cellar containing living or sleeping rooms, any such room shall be counted as other living or sleeping rooms, and no room in any residence containing fifty square feet or less floor measure shall be counted, neither shall any hall in any residence be counted as a room unless it is a reception hall.

Sprinkling streets, yards, &c., 4 hours per day, 50 ft. front	$4.50 per year.
Sprinkling streets, yards &c., 4 hours per day, each additional ft. front	.09 per year.
Sprinkling streets, yards &c., 4 hours per day, corner lots ½ width of side street per foot	.09 "
Saloons, each beer pump	10.00 "
" for use of bar	5.00 "
Stables, only where horses are kept private, one horse, including carriage washing	2.50 "
Stables, each additional horse	1.00 "
Stables, each cow	1.00 "
" dray & team of horses, each horse	1.00 "
" livery boarding and sale including carriage washing per horse	1.50 "
Steam boilers, per horse-power, 12 hours per day	2.00 "
" " " 24 " "	4.00 "
Street sprinkling, per wagon, each team employed per day	.50 "
Stores not otherwise enumerated	5.50 "
Workshops, 10 persons or under employed	4.50 "
" each additional person	.20 "
Tenement-houses each family 6 rooms or less	6.00 "
" " additional room up to 9 rooms	.75 "
28 Tenement-houses each additional room over 9 rooms	.50 per year.
Urinal, private	2.00 per year.
" additional for bath-tub	2.00 "
" public	5.00 "
Wash-basins, stationary, first free, all other ea	.75 "
Water-closet, private, with urinal	2.00 "
" " additional for bath-tub	3.00 "
" and urinal	2.00 "
" public hotel, restaurant, stores, &c., ea.	4.50 "
Warehouses	7.00 per year.

Rates for other uses to be proportionate to the above according to the water used. Rates for fixtures not enumerated, to be proportionate to foregoing rates.

Minimum rates for premises supplied quarter year, $1.00 per year, $4.00.

The above rates shall be payable in advance between the first and fifteenth days of January and July each year, one-half the above yearly rates being payable each six months.

Building Purposes.

Brick, wall measure per 1,000	$ .03½
Stone, per perch	.03½
Plaster, per 100 yards	.08

Water for building purposes where brick, stone and plastering are not charged for, at the following rates:

Ordinary frame buildings	$2.00
Large " "	3.00
Ordinary brick building	5.00
Other buildings and uses, each barrel of lime or cement	.03½

No charge less than $1.00.

29 The above rates for building purposes shall be payable on the first day of the month succeeding that for which the water is furnished, and where the use shall cease more than ten days before the end of the month, then such rates shall be payable within ten days after such use shall cease.

Domestic and Other Uses, with Meter.

SECTION 4. Said corporation shall be entitled to a charge and receive for water furnished for domestic uses, manufacturing purposes and other uses and purposes where such water is furnished or measured by meter, — the following rates shall be in full for water furnished for rent or use of meter and for turning on and turning off water:

Meter Rates.

100 to 500 gallons per day, per 1,000 gallons	$ .32
500 to 1,000 gallons per day, per 1,000 gallons	.30
1,000 to 2,000 " " " "	.25
2,000 to 3,000 " " " "	.20
3,000 to 4,000 " " " "	.18
4,000 to 5,000 " " " "	.13
5,000 to 6,000 " " " "	.10
6,000 to 10,000 " " " "	.08
Over 10,000 gallons per day, per 1,000 gallons	.06
Minimum charge where water is furnished through meter, per quarter year	1.25
Per year	5.00

When water is taken by meter, the rates shall be payable monthly on or before the fifteenth (15) day of the month succeeding that for which the water is furnished. Said corporation shall have the right to furnish water and consumers to take water at meter rates, and when meters are required, either by said corporation, or by

30 said consumers, they shall be furnished by said corporation without charge, except the meter rates aforesaid. In all cases such meters shall be subject to supervision, inspection, and condemnation of the committee on water, and when condemned shall be removed and a correct meter substituted at the cost of the corporation operating such water works, and in case of failure to substitute a correct meter within ten (10) days after notice of such condemnation, the rate for the premises supplied shall be no more than the minimum meter rates as herein fixed, until such correct meter is furnished. When any consumer shall in writing apply

for a meter at the office of said corporation with whose pipes his premises are connected and ready for, or offered to be put in readiness for the placing or setting of such meter and shall tender the quarterly meter rate as hereinbefore fixed, it shall be the duty of said corporation to furnish and set such meter within ten days thereafter, and in case of a failure so to do, said corporation shall not be entitled to collect for water furnished for such premises, more than the minimum meter rate, as herein fixed, until such meter is furnished.

SECTION 5. Where the consumer shall neglect or refuse to pay his bill for water furnished within the time herein fixed, said corporation having informed him of the amount thereof, may on ten days' notice, turn off the water for such premises, and shall not be required to turn such water on for said consumer, until such bill is paid.

SECTION 6. Said corporation so operating water works in the city of Freeport shall be subject to the provisions of this ordinance, and said corporation and its officers, agents and employés wilfully charging or collecting for water furnished at a greater rate than is fixed in section three and four hereof, shall be guilty of a misde-
31 meanor and u[illegible] conviction thereof, shall be fined not less than one (1) dolla[illegible] or more than one hundred ($100) dollars and costs of prosecution.

SECTION 7. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

SECTION 8. This ordinance shall take effect and be in force from and after its passage and publication, provided, that nothing herein shall be construed to abridge the power of the city council to further regulate or fix water rates and charges for the use of water meters.

Passed February 10th, 1896.

Approved February 10th, 1896.

JAMES P. YOUNGER, *Mayor.*

Attest: GEO. H. TANDY, *City Clerk.*

And the defendant further avers that on and since the date of the passage and publication of said last-mentioned ordinance, as aforesaid, the same then was and has since been and now is in full force and effect, and that the water rates and charges as therein fixed and stated are obligatory on the said plaintiff until otherwise determined, as the statute directs.

And the defendant further avers that on and prior to the passage, approval, and publication of said last-mentioned ordinance, to wit, on the 6th day of January, 1896, the said city council of said city of Freeport appointed a committee of its own members to confer with the said plaintiff in relation to mutually thereafter fix reasonable, just, and fair rates for water service to said city and its inhabitants, and then and there notified the said plaintiff that such rates and charges then existing and fixed in the ordinance in said
32 declaration mentioned were unjust and unreasonable, and that the said city, the defendant, would no longer continue

to pay the annual rental for hydrants, or approve the charges and rates so fixed by said original ordinance for water service, and thereupon the said plaintiff refused to treat with said committee, and neglected to reduce or fix such rental and water rates so as to make the same just, reasonable, *nad* fair, and that the said city council of said city did thereafter, as aforesaid, proceed to and enacted the said last-mentioned ordinance, and in and thereby did declare and fix such just and reasonable rents for hydrant service and rates to water consumers, and the defendant says that such rents and charges so fixed and determined upon and contained in said last-mentioned ordinance, both as to city and individuals, are fair, just, and reasonable.

And the defendant further avers that after the enactment of the said last-mentioned ordinance, to wit, on the 10th day of July 1896, the defendant then paid the said plaintiff all sums of money due to the plaintiff from the defendant for water rents and water service as provided for in said original ordinance, according to the rates fixed in and by said original ordinance, to the 11th of February, 1896, and all sums so due since the enactment of said subsequent ordinance, according to the rates and charges therein fixed, to the first day — July, 1896, amounting in all to the sum of thirty-four hundred and eighty-five and $\frac{17}{100}$ dollars, and the defendant avers that the said sum is a full payment and discharge of all sums of money then due and owing from defendant to the plaintiff for rent and water service from the first day of January, 1896, to the first day of July, 1896; and this the defendant is ready to verify. Wherefore defendant prays judgment, etc.

BOTSFORD, WAYNE & BOTSFORD,
Def't's Att'ys.

W. N. CRONKRITE,
Corporation Counsel.

33 No. 2. And for a further plea in this behalf the defendant says *actio non*, because defendant says that the several supposed causes of action in the said declaration mentioned are one and the same, to wit, the supposed cause of action in the said first count mentioned, and not different causes of action, and at the time of the enacting of the said ordinance in that count mentioned, to wit, on the 6th day of June, 1882, the defendant was a municipal corporation organized under the general law relating to the incorporation of cities and villages of the State of Illinois, and in its legislative capacity and in pursuance of the then existing statutes of said State relative to "water works," the city council of the city of Freeport caused to be enacted the said ordinance; that the said Nathan Shelton in said ordinance mentioned accepted the provisions thereof, and that in and by the said ordinance certain rents, charges, and rates were fixed and determined upon between the said Shelton and the defendant for rental of hydrants and water service to individuals, and that thereafter the said city, and such individuals as were supplied with water by said plaintiff, as the assignee of said Shelton, paid to plaintiff the rents, rates, and charges, as fixed and provided

r in said ordinance, to the 11th day of February, 1896; but the
fendant avers that after the enactment of the said ordinance, on, to
it, the first day of July, 1891, by reason of the then conditions and
lations of the said plaintiff company in the furnishing said city and
s inhabitants with water under said ordinance, the rents, rates, and
arges therein and thereby fixed for water service became and were
njust and unreasonable and imposed upon the said city and its in-
abitants unjust and unreasonable burdens, and that thereupon the
city council of the city of Freeport endeavored to agree with the
4 said plaintiff so as to mutually readjust and fix said water rents,
rates, and charges to make the same fair, reasonable, and just,
nd, failing so to do, on, to wit, the 10th day of February, 1896, the
ity council of said city of Freeport then and there, in the exercise of
s legislative wisdom and discretion, contending that the said water
ents, rates, and charges as then in existence and in force and as
ixed in and by said ordinance were unjust and unreasonable, pro-
eeded to and did, on the day and year last aforesaid, by another ordi-
nance, readjust, fix, and declare other just and reasonable rates for
uch water service so as to make the same fair, just, and reasonable,
which said last-mentioned ordinance was then and there enacted
nd approved by the mayor of the city of Freeport, and afterwards,
o wit, on the 11th day of February, 1896, was duly published by
he order of the said city council in the corporation newspapers
published in said city, whereby the said last-mentioned ordinance on
he day and date last aforesaid then became and was a legal and
valid enactment of said municipality, and the water rates, rents,
and charges therein fixed were and are fair, just, and reasonable
and which said last-mentioned ordinance is entitled "An ordinance
to fix and regulate water rates and the prices and charges for water
furnished for the use of water meters furnished at the city of Free-
port, Illinois, and its inhabitants," a true copy of which last-men-
tioned ordinance is set out in the words and figures in defendant's
first amended plea filed herein.

And the defendant further avers that on and since the date of the
last passage and publication of said last-mentioned ordinance, as
aforesaid, the same then and there was, has since been, and now is
in full force and effect, and that the water rates, rents, and charges
as therein fixed and stated are obligatory on the said plaintiff until
otherwise determined as the statute directs.

35 And the defendant further avers that after the enactment
of the said last-mentioned ordinance, to wit, on the 10th day
of July, 1896, the defendant then paid to the said plaintiff all sums
of money due to the plaintiff from the defendant for water rents
and water service provided for in said original ordinance, according
to the rates fixed in and by said original ordinance, to the 11th day
of February, 1896, and all sums so due for water furnished since
the enactment of said last-mentioned ordinance, according to the
rates and charges therein fixed, to the 1st day of July, 1896, amount-
ing in all to the sum of, to wit, $3,700. Wherefore the defendant
says that it does not owe to the plaintiff the said sums of money in
the said declaration claimed or any part or portion thereof; and

this the defendant is ready to verify. Wherefore the defendant prays judgment, etc.

BOTSFORD, WAYNE & BOTSFORD,
Def'ts Att'ys.

W. N. CRONKRITE,
Corporation Counsel.

UNITED STATES OF AMERICA, }
State of Illinois, Stephenson County, } ss:

In the Circuit Court of said County, of the December Term, A. D. 1899.

Pleas before the Hon. James Shaw, one of the judges of the 15th judicial circuit of the State of Illinois and sole presiding judge of the circuit court of said Stephenson county, and at a term thereof begun and held at the court-house, in the city of Freeport, in said county, on the 4th day of December, A. D. 1899, and in the one hundred and twenty-third year of the Independence of the United States.

36 Present: The Hon. James Shaw, judge of said court; H. W. Bolender, clerk; O. E. Heard, State's attorney; J. M. Fox, sheriff.

Attest: H. W. BOLENDER, *Clerk.*

And be it further remembered that on the 11th day of December, A. D. 1899, the same being one of the days of the December term, A. D. 1899, of said court, the following proceedings were had in said court and entered of record therein, to wit:

STATE OF ILLINOIS, }
Stephenson County, } ss:

In the Circuit Court of said County, of the December Term, A. D. 1899.

FREEPORT WATER COMPANY }
vs.
THE CITY OF FREEPORT. }

And now, on this day, come the parties hereto, by their respective attorneys, and this cause again coming on to be heard upon the demurrer of the plaintiff to the defendant's first and second amended special pleas, which was taken under advisement by the court at the March term, A. D. 1897, of this court, and the court, being now fully advised in the premises, overrules said demurrer as to each of said special pleas; to which ruling of the court the plaintiff now here excepts and elects to stand by its said demurrer, and thereupon the court enters judgment on the said demurrer against the plaintiff and in favor of the defendant, and it is ordered by the court that the said defendant have and recover of and from the
37 said plaintiff its costs of the suit as taxed by the clerk, and that the defendant have execution therefor; to the entry of

which said judgment the plaintiff now here excepts and prays an appeal to the supreme court of the State of Illinois, which is allowed by the court upon the plaintiff filing a bond in the sum of two hundred dollars, with surety to be approved by the clerk, within thirty days from the entering of this order.

JAMES SHAW, *Judge.*

And afterwards, to wit, on the 4th day of January, A. D. 1900, the plaintiff filed in the office of the clerk of said court its appeal bond, which was duly approved by the clerk of said court, executed by itself and O. B. Bidwell, which is in the words and figures following, to wit:

Know all men by these presents that we, the Freeport Water Company of Freeport, Illinois, and O. B. Bidwell, of the county of Stephenson and State of Illinois, are held and firmly bound unto the City of Freeport, Illinois, in the penal sum of two hundred dollars; for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Freeport, Illinois, this 4th day of January, in the year of our Lord one thousand nine hundred.

The condition of the above obligation is such that whereas the said City of Freeport did, on the 11th day of December, one thousand eight hundred and ninety-nine, at a term of the circuit court then being holden within and for the county of Stephenson, in the State of Illinois, obtain a judgment against the above-
38 bounden The Freeport Water Company for the costs, amounting to six & $\frac{95}{100}$ dollars, from which judgment the said Freeport Water Company has prayed for and obtained an appeal to the supreme court of the said State of Illinois: Now, if the said Freeport Water Company shall duly prosecute said appeal and shall, moreover, pay the amount of the said judgment, costs, interest, and damages, rendered and to be rendered, against it, the said Freeport Water Company, in case the said judgment shall be affirmed in the said supreme court, then the above obligation to be null and void; ortherwise to remain in full force and virtue.

[Seal of said Company.]

FREEPORT WATER COMPANY,
By M. STOSKOPF, *Its President.*
O. B. BIDWELL. [L. S.]

Upon which bond is the following endorsement, to wit: "Filed this 4th day of January, A. D. 1900, and approved by me. H. W. Bolender, clerk."

STATE OF ILLINOIS, } ss:
Stephenson County, }

I, H. W. Bolender, clerk of the circuit court of Stephenson county, in the State aforesaid, and keeper of the records and files of said court, do hereby certify the above to be a true, perfect, and complete

copy of the sommons and the return thereon, the plaintiff's declaration, the defendant's pleas thereto, the plaintiff's demurrer to said pleas, and the orders and judgment of said court and the plaintiff's appeal bond in a certain cause pending in said court, on the common-law side thereof, wherein The Freeport Water Company is
39 plaintiff and The City of Freeport defendant, as the same appear from the records and files of said court now in my office remaining.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Freeport, this 22nd day of January, A. D. 1900.

[SEAL.] H. W. BOLENDER, *Clerk.*

In the Supreme Court of Illinois, February Term, A. D. 1900.

THE FREEPORT WATER COMPANY, Appellant,
vs.
THE CITY OF FREEPORT, Appellee.

And now comes The Freeport Water Company, appellant, by Fry & Hyde, its attorneys, and says that in the record and proceedings aforesaid there is manifest errors in this—that is to say:

1. The circuit court erred in overruling the demurrer of appellant to appellee's amended first and second pleas, and each of them, because the ordinance passed February 10, 1896, set forth in said pleas, is in violation of section 10 of article 1 of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of contracts.

2. The circuit court erred in overruling the demurrer of appellant to appellee's amended first and second pleas, and each of them, because the ordinance passed Februry 10, 1896, set forth in
40 said pleas, is in violation of article 1 of section 14 of the amendments to the Constitution of the United State of America, in that it attempts to deprive appellant of its property without due process of law.

3. The circuit court erred in overruling the demurrer of appellants to appellee's amended first and second pleas, and each of them, because the statutes of the State of Illinois in force February 10, 1896, relating to "water works," in said pleas referred to, are in violation of section 10 of article 1 of the Constitution of the United States of America, which prohibits any State to pass a law impairing the obligation of contracts.

4. The circuit court erred in overruling the demurrer of appellant to appellee's amended first and second pleas, and each of them, because the statutes of the State of Illinois in force February 10, 1896, relating to "water works," in said pleas referred to, are in violation of article 1, section 14, of the amendments to the Constitution of the United States of America, in that it attempts to deprive appellant of its property without due process of law.

5. The circuit court erred in overruling the demurrer of appel-

lant to appellee's amended first and second pleas, and each of them, because the ordinance set forth in said pleas and passed February 10, 1896, under and by virtue of the supposed authority of the then existing statutes of the State of Illinois relating to "water works," referred to in said pleas and relied upon as the defense to said suit,
seeks to impair the contract made and entered into between
41 Nathan Shelton, assignor of appellant, and appellee, created
by the ordinance in appellant's declaration mentioned and the acceptance thereof, and by reason thereof is repugnant to section 10, article 1, of the Constitution of the United States of America, which provides that no State shall pass any law impairing the obligation of contracts.

6. The circuit court erred in overruling the demurrer of appellant to appellee's amended first and second pleas, and each of them, because the ordinance set forth in said pleas and passed February 10, 1896, under and by virtue of an act of legislature of the State of Illinois, entitled "An act to enable cities, towns, and villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company, or corporation to any such city, town, or village and the inhabitants thereof," approved June 6, 1891, being the statute of the State of Illinois then in force and referred to in said pleas and relied upon as the defense to said suit, seeks to impair the contract made and entered into between Nathan Shelton, assignor of appellant and appellee, created by the ordinance in appellant's declaration mentioned and the acceptance thereof, and by reason thereof is repugnant to section 10, article 1, of the Constitution of the United States of America, which provides that no State shall pass any law impairing the obligation of contracts.

7. The circuit court erred in overruling appellant's demurrer to appellee's amended first and second pleas, and each of them, for
the reason that the ordinance of February 10, 1896, in said
42 pleas mentioned, passed under the supposed authority of the then existing statutes of the State of Illinois relating to "water works," in said pleas referred to, is in violation of section 1, article 14, of the amendment to the Constitution of the United States of America, which provides that no State shall deprive any person of its property without due process of law.

8. The circuit court erred in overruling appellant's demurrer to appellee's amended first and second pleas, and each of them, for the reason that the ordinance of February 10, 1896, in said pleas mentioned, passed under and by virtue of the supposed authority of an act of legislature of the State of Illinois, entitled "An act to enable cities, towns, and villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company or corporation to any such city, town, or village and the inhabitants thereof," approved June 6, 1891, being the statutes of the State of Illinois referred to in said pleas, is in violation of section 1, article 14, of the amendments to the Constitution of the United States of America

which provides that no State shall deprive any person of its property without due process of law.

February 5th, 1900.

FRY & HYDE,
Attorneys for Appellant.

43 And afterwards, to wit, on the seventeenth day of February, A. D. 1900, certain proceedings were had in said court and orders entered of record in the words and figures following, viz:

THE FREEPORT WATER COMPANY *vs.* THE CITY OF FREEPORT. } No. 1261. Appeal from Stephenson.

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that —— ——, appellant, hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof and briefs and arguments of counsel in support of the errors assigned herein and entered motion to reverse the judgment and remand said cause and for costs, and the said appelle, —— ——, having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, *and* said cause is here submitted for the consideration and judgment of the court.

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

44 At a supreme court begun and held at Springfield on Tuesday, the fifth day of June, in the year of our Lord one thousand nine hundred, within and for the State of Illinois.

Present: Carroll C. Boggs, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the twenty-first day of June, A. D. 1900, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

THE FREEPORT WATER COMPANY *v.* THE CITY OF FREEPORT. } No. 1261. Appeal from Stephenson.

And now, on this day, this cause having been argued by counsel and the court having diligently examined and inspected as well

ie record and proceedings aforesaid as the matters and things herein assigned for error, and being now sufficiently advised of nd concerning the premises, for that it appears to the court now ere that neither in the record and proceedings aforesaid nor in the endition of the judgment aforesaid is there anything erroneous, icious, or defective, and that in that record there is no error; herefore it is considered by the court that the judgment aforesaid e affirmed in all things and stand in full force and effect notwithtanding the said matters and things therein assigned for error; nd it is further considered by the court that the said appellee recover of and from the said appellant its costs by it in this behalf expended, and that it have execution therefor.

45 At a supreme court begun and held at Springfield on Tuesday, the fifth day of June, in the year of our Lord one thousand nine hundred, within and for the State of Illinois.

Present: Carroll C. Boggs, chief justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; James H. Cartwright, justice; Jacob W. Wilkin, justice; Joseph N. Carter, justice; John P. Hand, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest: CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the twenty-first day of June, 1900, the opinion of the court was filed in the words and figures following, to wit:

FREEPORT WATER CO. *vs.* CITY OF FREEPORT. } No. 1261. Error to —. Appeal from Stephenson.

46 Docket No. 1261. Ag. 36. Northern Div. Feb., 1900.

THE FREEPORT WATER CO. *v.* THE CITY OF FREEPORT.

On the sixth of June, 1882, the city of Freeport, organized under the general law for the incorporation of cities and villages, passed an ordinance granting to one Nathan Shelton or his assigns the exclusive right, for the term of thirty years, of supplying the city and citizens thereof, by a system of water works to be constructed as in said ordinance prescribed, with water, the terms and conditions of which ordinance were accepted by said Shelton on June 7, 1882, and by which the city agreed to pay during the full term of thirty years, to said Shelton or his assigns, an annual rental of $100 per annum for the first one hundred hydrants, and for all hydrants over one hundred and up to one hundred and fifty the sum of $80 per hydrant, and for all hydrants over one hundred and fifty an annual rental of $50 per hydrant, the rentals being payable semi-annually, on the 15th days of January and July of each year. The city is given the free use of water for flushing gutters and sewers, on

notice to the person in charge of the water works, free water for the fire department, for city hall and offices, for public schools and all churches of the city, and for four public fountains for drinking only, and one fountain in the public square, should the city erect the same. On the eighth of August, 1882, Shelton sold and assigned all his rights under this ordinance to the plaintiff, and under it the plaintiff had, on and prior to January 1, 1896, constructed and placed one hundred and twenty-one hydrants, up to which time the city paid all rentals called for by the said ordinance. This suit was brought by the appellant in assumpsit, against the city, to recover the sum of $5,840 alleged to be due it on the 15th day of July, 1896, for hydrant rentals from January 1 to July 1, 1896.

The plaintiff's declaration consisted of two special counts setting out the original ordinance *in hæc verba*, and a third containing the consolidated money counts. The defendant filed two special pleas, by which it was alleged, in substance, that the rates fixed by the Shelton ordinance were and had remained, from the time of its enactment until the subsequent action of the city council, unjust, unreasonable and oppressive; that on the 10th day of Febru-
47 ary, 1896, the said ordinance being then in force and effect, the city council, by an ordinance then and there enacted, approved and published, readjusted and fixed such water rates so as to make the same just, reasonable and fair, and that said ordinance then became and was a legal and valid enactment of the defendant,—which amendatory ordinance is set out *in hæc verba*, and fixes the price for each hydrant at $50 per year, payable semi-annually, on the 15th days of July and January of each year; that since the date of its passage and publication the same has ever since been and now is in force, and that the water rates and charges therein fixed and stated are obligatory on plaintiff and are fair, just and reasonable, and that on the 10th day of July, 1896, the defendant paid to the plaintiff all sums of money due it, as fixed by the original ordinance, up to the 11th day of February, 1896, and all sums of money due plaintiff since the enactment of such subsequent ordinance, according to the rates therein fixed, up to July 1. To these pleas plaintiff demurred. The court overruled the demurrer to the pleas, and, plaintiff electing to stand by its demurrer, judgment was entered against it and in favor of the defendant for costs.

Appellant assigns as error, and insists, that the ordinance of February 10, 1896, and the statute of the State of Illinois on which said amendatory ordinance is based, being the act of June 6, 1891, in force July 1, 1891, are each in violation of section 10 of article 1 of the Constitution of the United States, and of section 1 of article 14 of the amendments to said Constitution, as impairing the obligation of contracts and in depriving appellant of its property without due process of law.

Per *Curiam:*

It appears that the appellant is a corporation organized under the general incorporation law of the State of Illinois. The precise questions presented on this record arose in the cases of City of Danville

Danville Water Co., 178 Ill., 299, and 180 *id.*, 235, where it was
ld that a corporation organized under the general incorporation
t agrees to submit itself to such regulations and provisions as the
gislature may deem it advisable to make, under section 9 of said act,
which the right of the legislature to regulate the rates at which water
shall be supplied to the public by a water company so organ-
3 ized is reserved; that the act of June 6, 1891, empowering
cities to fix reasonable water rates, is constitutional and
alid, notwithstanding the fact that the city had theretofore entered
ito a contract with a private corporation by which the rentals for
ater had been fixed during the period of the franchise; that the
ity has no power, by virtue of the act of April 9, 1872, and section
of article 10 of the city and village act, to bind itself to the pay-
ent of a fixed sum for an entire period of thirty years in advance,
ut that the city might, under the act of June 6, 1891, make a rea-
onable reduction for future supply. The demurrer to the pleas
dmits that the rates for hydrant rentals to be paid to the appellant
nder the amendatory ordinance of February 10 were reasonable
nd just, and the cases just cited must be held conclusive of this
ase.

The judgment of the circuit court of Stephenson county is af-
irmed.

Judgment affirmed.

49 STATE OF ILLINOIS, *ss:*

Supreme Court.

I, Christopher Mamer, elected clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Springfield, this 2nd day of July, A. D. 1900.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

C. MAMER,
Clerk of the Supreme Court.

50 And afterwards, on the seventh day of July, A. D. 1900, there was filed in the office of the clerk of said court a certain petition and order in the words and figures following, viz:

STATE OF ILLINOIS, } ss.:
County of Cook, }

In the Supreme Court of Illinois, Vacation After June Term, A. D. 1900.

FREEPORT WATER CO., Appellant, }
vs. } Gen. No., 1261.
CITY OF FREEPORT, Appellee. }

To the Honorable Carroll C. Boggs, chief justice of the supreme court of the State of Illinois:

And now comes The Freeport Water Company, appellant in the above-entitled cause, the petitioner, by Fry & Hyde, its attorneys, and complains that in the record and proceedings had in said cause, and also in the rendition of the judgment entered in this court in the above-entitled cause on the 21st day of June, A. D. 1900, at the June, A. D. 1900, term thereof, in favor of The City of Freeport, appellee, and against The Freeport Water Company, appellant, there is manifest error.

Your petitioner further shows that it appears by the record now remaining in the supreme court of the State of Illinois that certain rights and privileges were claimed under the Constitution of the United States of America by The Freeport Water Company, appellant; that said supreme court of Illinois erroneously decided against said rights and privileges of The Freeport Water Company, appellant, which were specifically set up and claimed under such Constitution; and, further, that the validity of the authority exercised under the statutes of the said State of Illinois were drawn in question in said suit by said Freeport Water Company,
51 appellant, on the ground that said statutes were repugnant to the Constitution of the United States of America, and the decision of said circuit court of Illinois was in favor of the validity of the authorities so exercised, and the decision of said supreme court of the State of Illinois was adverse to the Freeport Water Company, appellant; from all of which the said Freeport Water Company, appellant, alleges that it appears in and from the said record and proceedings in said suit that manifest error has occurred, to the great damage of said Freeport Water Company, appellant, and that a Federal question is presented upon the record in said cause which should be passed upon by the Supreme Court of the United States of America.

Wherefore the said Freeport Water Company, your petitioner, prays that there be granted unto it, under and pursuant to the act of Congress in such cause made and provided, a writ of error from the Supreme Court of the United States of America to the supreme court of the State of Illinois, so that the said error therein may be corrected and speedy justice done in the premises; and that a citation may be issued herein pursuant to law, citing and admonishing said City of Freeport, appellee, to be and appear at the Supreme Court of the United States, at Washington, according to the usual

urse and practice in such cases, and your petitioner files herewith bond that it will make good its plea or otherwise answer all costs at may be sustained by said City of Freeport, appellee, and prays at such further order and proceedings may be had and entered erein, and such further process granted it herein as may be necesry fully to grant to the Freeport Water Company, appellant, your etitioner, the relief herein prayed for, according to the usual course nd practice in such cases.

And your petitioner will ever pray, etc.

THE FREEPORT WATER CO.,
2 By FRY & HYDE, *Their Attorneys.*

GEO. C. FRY, *Of Counsel.*

JULY 3RD, 1900.

Upon consideration of the allegations of the foregoing petition, it s ordered that a writ of error be, and it is hereby, allowed, as prayed n said petition, on filing of the bond hereto attached.

CARROLL C. BOGGS,
Chief Justice Supreme Court of Illinois.

And afterwards, to wit, on the seventh day of July, A. D. 1900, there was filed a certain bond in the words and figures following, viz:

Know all men by these presents that we, the Freeport Water Company, a corporation organized and existing under the laws of the State of Illinois, as principal, and Orlando B. Bidwell, of Freeport, in the county of Stephenson and State of Illinois, as surety, are held and firmly bound unto the City of Freeport, its successors, attorneys, and assigns, in the sum of five hundred dollars ($500.00); for the payment of which, well and truly to be made, the said Freeport Water Company, for itself, its successors, and assigns, and said Orlando B. Bidwell, for himself, his heirs, executors, and administrators, bind ourselves, jointly and severally, firmly by these presents.

Witness our hands and seals this 29th day of June, A. D. 1900.

The condition of the above obligation is such that whereas in a certain suit lately pending in the supreme court of the State
53 of Illinois, wherein The Freeport Water Company is the appellant and The City of Freeport the appellee, an order and judgment were entered on the 21st day of June, A. D. 1900, affirming the judgment of the circuit court of Stephenson county in a certain suit theretofore pending in said circuit court between the same parties;

And whereas it was further adjudged and decreed by said supreme court that The City of Freeport, the appellee therein, have and recover its costs of and from The Freeport Water Company, appellant;

And whereas, further, the said Freeport Water Company has sued out a writ of error from the Supreme Court of the United States of

America to reverse the said order and judgment of the supreme court of the State of Illinois:

Now, therefore, if the above-bounden Freeport Water Company shall prosecute its said writ of error to effect and answer and pay all costs if it fail to make good its plea, then this obligation shall be void; otherwise to remain in full force and effect.

THE FREEPORT WATER COMPANY,
[SEAL.] By MICHAEL STOSKOPF, *Its President.*
ORLANDO B. BIDWELL. [SEAL.]

STATE OF ILLINOIS, } ss:
County of Stephenson, }

Orlando B. Bidwell, being first duly sworn, on oath deposes and says that he is a citizen of the United States of America and of the State of Illinois and is a resident of the city of Freeport, in said Stephenson county; that he executed the foregoing bond for the uses and purposes therein mentioned, and that he is worth
54 five hundred dollars ($500.00) and upwards, over and above all his debts and liabilities, in property not by law exempt from execution.

And further affiant saith not.

ORLANDO B. BIDWELL.

Subscribed and sworn to before me this 29th day of June, A. D. 1900.

[SEAL.] H. C. HYDE,
Notary Public.

The above and foregoing bond is approved by me this 3rd day of July, A. D. 1900.

CARROLL C. BOGGS,
Chief Justice of the Supreme Court of the State of Illinois.

STATE OF ILLINOIS, } ss:
County of Cook, }

In the Supreme Court of Illinois.

FREEPORT WATER CO., Appellant,
vs.
CITY OF FREEPORT, Appellee. } Gen. No., 1261.

To Douglas Pattison, Esq., corporation counsel; Robert B. Mitchell, city attorney for city of Freeport, and R. M. Botsford, of counsel.

GENTLEMEN: Please take notice that on Tuesday, July 3rd, A. D. 1900, we shall present to the Honorable Carroll C. Boggs, chief justice of the supreme court of the State of Illinois, the petition for a writ of error in the above-entitled cause, and for citation, a copy of which is herewith served upon you, and shall at the same time and place present for approval the bond a copy of which is herewith

served upon you, at which time and place you may appear if you see fit.

55 Yours respectfully, FRYE & HYDE,
Attorneys for Appellant.

Copy of the above notice, petition, and bond received this 29th day of June, A. D. 1900. Said bond is satisfactory to appellee as to surety.

ROBERT B. MITCHELL,
City Attorney, Attorney for Appellee.
DOUGLAS PATTISON,
Corporation Counsel, Attorney for Appellee.

56 Supreme Court of the United States, to the October Term, A. D. 1900.

FREEPORT WATER COMPANY, Plaintiff in Error,
v.
CITY OF FREEPORT, Defendant in Error.

And now comes The Freeport Water Company, plaintiff in error, by George C. Fry, its attorney, and says: In the record and proceedings aforesaid there is manifest error, in this—that is to say:

(1.) The supreme court of the State of Illinois erred in affirming the judgment of the circuit court of Stephenson county, Illinois, overruling the demurrer of plaintiff in error to the amended first and second pleas of defendant in error, because the ordinance passed February 10th, 1896, set forth in said pleas, is in violation of section 10 of article 1 of the Constitution of the United States of America, which prohibits any State from passing a law impairing the obligation of contracts.

(2.) The supreme court of the State of Illinois erred in affirming the judgment of the circuit court of Stephenson county, Illinois, overruling the demurrer of plaintiff in error to the amended first and second pleas of defendant in error, and each of them, because the ordinance passed February 10th, 1896, set forth in said pleas, is in violation of article 1 of section 14 of the amendments to the Constitution of the United States of America, in that it deprives plaintiff in error of its property without due process of law.

(3.) The supreme court of the State of Illinois erred in affirming the judgment of the circuit court of Stephenson county, Illinois, overruling the demurrer of plaintiff in error to the amended first and second pleas, and each of them, of defendant in error, because the statute of the State of Illinois in force February 10th, 1896, relating to "water works," in said pleas referred to, are in violation of section 10 of article 1 of the Constitution of the United States of America, which prohibits any State from passing a law impairing the obligation of contracts.

57 (4.) The supreme court of the State of Illinois erred in affirming the judgment of the circuit court of Stephenson county, Illinois, overruling the demurrer of plaintiff in error to the

amended first and second pleas, and each of them, of defendant in error, because the statutes of the State of Illinois in force February 10th, 1896, relating to "water works," in said pleas referred to, are in violation of article 1 of section 14 of the amendments of the Constitution of the United States of America, in that it deprives plaintiff in error of its property without due process of law.

(5.) The supreme court of the State of Illinois erred in affirming the judgment of the circuit court of Stephenson county, Illinois, overruling the demurrer of plaintiff in error to the amended first and second pleas, and each of them, of defendant in error, because the ordinance set forth in said pleas and passed February 10th, 1896, under and by virtue of the supposed authority of the then existing statutes of the State of Illinois relating to "water works," referred to in said pleas and relied upon as the defense to said suit, impairs the contract made and entered into between Nathan Shelton, assignor of plaintiff in error, and the defendant in error, created by the ordinance in plaintiff in error's declaration mentioned, and the acceptance thereof, and by reason thereof is repugnant to section 10, article 1, of the Constitution of the United States of America, which provides that no State should pass any law impairing the obligation of contracts.

(6.) The supreme court of the State of Illinois erred in affirming the judgment of the circuit court of Stephenson county, Illinois, overruling the demurrer of plaintiff in error to defendant in error's amended first and second pleas, and each of them, because the ordinance set forth in said pleas and passed February 10th, 1896, under and by virtue of an act of the legislature of the State of Illinois entitled "An act to enable cities, towns, and villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company, or corporation to any such city, town, or village and the inhabitants thereof," approved June 6th, 1891, being the statute of the State of Illinois then in force and referred to in said pleas and relied upon as a defense to said suit, impairs the contract made and entered into between Nathan Shelton, assignor of plaintiffs
58 in error, and defendants in error, created by the ordinance, and acceptance thereof, set forth in plaintiff in error's declaration, and by reason thereof is in violation of section 10, article 1, of the Constitution of the United States of America, which provides that no State shall pass any law impairing the obligation of contracts.

(7.) The supreme court of the State of Illinois erred in affirming the judgment of the circuit court of Stephenson county, Illinois, overruling plaintiff in error's demurrer to defendant in error's amended first and second pleas, and each of them, for the reason that the ordinance of February 10th, 1896, in said pleas mentioned, and passed under the supposed authority of the then existing statute of the State of Illinois relating to "water works," in said pleas referred to, is in violation of section 1, article 14, of the amendments to the Constitution of the United States of America, which

provides that no State shall deprive any person of its property without due process of law.

(8.) The supreme court of the State of Illinois erred in affirming the judgment of the circuit court of Stephenson county, Illinois, overruling plaintiff in error's demurrer to defendant in error's amended first and second pleas, and each of them, for the reason that the ordinance of February 10th, 1896, in said pleas mentioned, passed under and by virtue of the supposed authority of the legislature of the State of Illinois entitled "An act to enable cities, towns, and villages incorporated under any general or special law of this State to fix the rates and charges for the supply of water furnished by any individual, company, or corporation to any such city, town, or village and the inhabitants thereof," approved June 6th, 1891, being the statute of the State of Illinois referred to in said pleas, is in violation of section 1, article 14, of the amendments to the Constitution of the United States of America, in that it deprives plaintiff in error of its property without due process of law.

(9.) The supreme court of the State of Illinois erred in entering the judgment in favor of the defendant in error and against the plaintiff in error on the 21st day of June, A. D. 1900, in said cause, because the ordinance of defendant in error of February 10th, 1896,

and the statute of the State of Illinois on which said ordi-

59 nance is based, being an act of the legislature of the State of Illinois passed June 6th, 1891, and in force July 1st, 1891, and each of them, are in violation of section 10 of article 1 of the Constitution of the United States of America, in that it impairs the obligation of the contract between Nathan Shelton and the defendant in error set out in the declaration of plaintiff in error herein.

(10.) The supreme court of the State of Illinois erred in entering the judgment in favor of the defendant in error and against the plaintiff in error, on the 21st day of June, A. D. 1900, in said cause, because the ordinance of defendant in error of February 10th, 1896, and the statute of the State of Illinois on which said ordinance is based, being an act of the legislature of the State of Illinois passed June 6th, 1891, and in force July 1st, 1891, and each of them, are in violation of section 1 of article 14 of the amendments to the Constitution of the United States of America, in that it deprives plaintiff in error of its property without due process of law.

And the said Freeport Water Company, plaintiff in error, prays that the judgment aforesaid may be reversed, annulled, and wholly set at naught.

Dated this 12th day of July, A. D. 1900.

GEORGE C. FRY,
Counsel for Plaintiff in Error.

60 Supreme Court of the United States, to the October Term, A. D. 1900.

FREEPORT WATER COMPANY, Plaintiff in Error,
v.
CITY OF FREEPORT, Defendant in Error.

And now comes The Freeport Water Company, plaintiff in error, by George C. Fry, its attorney, and files herein the writ of error, an authenticated transcript of the record, an assignment of errors, and citation to the adverse party.

And now prays the court that the judgment rendered in the supreme court of the State of Illinois, and in said record shown, may be reversed and wholly set at nought.

Dated this twelfth day of July, A. D. 1900.

GEORGE C. FRY,
Counsel for Plaintiff in Error.

61 [Endorsed:] George C. Fry, counsel for plaintiff in error.

Endorsed on cover: File No., 17,833. Illinois supreme court. Term No., 348. The Freeport Water Company, plaintiff in error, *vs.* The City of Freeport. Filed July 16th, 1900.